

No. 9(1)82-8Lab/1488.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s S. J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 67 of 1981

between

SHRI SUKH RAJ, WORKMAN AND
THE RESPONDENT-MANAGEMENT
OF M/S S. J. KNITTING AND FINISH-
ING MILLS, 13/7, MATHURA ROAD,
FARIDABAD

Shri G. S. Chaudhary for the work-
man.

Shri B. R. Grover, for the respondent-
management.

AWARD

This reference No. 67 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order ID/FD/217-80/6706, dated 4th February, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Sukh Raj, workman and the respondent-management of M/s S. J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of services of Shri Sukh Raj, was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed:—

(1) Whether the reference is bad in law as services of the workman has not been terminated by the management? If so, to what effect?

(2) As per reference.

To prove these issues the respondent produced Shri Ran Nath Sharma, as MW-1 and closed their case. The workman produced his own statement as WW-1 and closed his case.

The case of the claimant is that he joined the services of the respondent-management on 1st January, 1977 as painter at the rate of Rs. 270 per month. The claimant workman had been working with the respondent-management till 10th August, 1980 after that he was not allowed to enter in the factory and in this way the respondent terminated the services of the workman without any reasons or notice or enquiry.

The respondent stated in his written statement that the above workman was charge-sheeted for certain acts of serious and grave misconduct for which domestic enquiry is pending and instead of taking part in the enquiry, the workman started being absent without leave. They further stated that the name of the workman was not struck off from the roll of the company as alleged in the demand notice. The name of the workman is still on the roll of the respondent-management. So there is no existence of industrial disputes and the reference is bad as pre-mature. The claimant had denied all the facts of the written statement and stated in his rejoinder that no enquiry is pending against the workman before any officer. The claimant presented himself at the factory gate daily but without any response from the respondent. Then the claimant gave a demand notice to the management under registered post in which the management neither replied it nor attended the conciliation proceedings and then the failure report was sent to the Government. So the reference is not bad in law.

My findings on issue No. 1 is as under:—
ISSUE NO. 1:

The representative of the management argued before me that it is not a case of termination. The respondent-management has not terminated the services of the claimant according to the record of the company. The workman is absent from duty and he is still on the roll according to the record.

The representative of the workman argued that the workman joined the services of the respondent on 1st January, 1977 as painter at a salary of Rs. 270 per month. The claimant has been working with the respondent till 10th August, 1980 there after the respondent refused to avail of his services on one pretext or another. In this way, the respondent terminated his services without any notice or reason or enquiry. Then the claimant gave a demand notice to the respondent-management under regd. post which is, Exhibit W-1. He further argued that the respondent should have struck off the name of the claimant after ten days absent without any reason according to the standing order applicable on the company but the respondent management had not struck off the name of the claimant from the roll of the company to harass the claimant for obstructing him for any action against the respondent. The respondent-management refused to give the duty when the workman approached to them for duty and marked absent in their register without any reason. He further argued that the respondent has not issued any letter of the claimant for his absent or for calling his explanation of absent. He further argued that the respondent had not constituted any domestic enquiry against the claimant. He further argued that marking absent in the register is against the standing order under para No. 16.4 which is as under:—

"If the workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (a) he returns within ten days of the commencement of the absence of the expiry of the leave and (b) explain to the satisfaction of the Manager the reason of his absence of his inability to return on the expiry of the leave, as the case may be. In case he loses his lien on his appointment he shall be entitled to be kept on the Badli list where there is badli system".

According to the arguments of the workman it is a new method of the

management to remove and to put the workman on road. On one hand there is no enquiry against the claimant and no such charges against him and on the other hand the respondent refused to take him on duty without any reason. It is simple termination in view of the respondent. In this method what the workman can do except to go in reference. So the reference is not bad in the eye of the law and this Court has jurisdiction to decide this matter. The representative of the management cited 1970 Labour Industrial Cases, Page 421 and 1968—Labour Industrial Cases, Page 526—851 in this case but after going through these references, I am of the opinion that the above citations are not applicable in the present case. The representative of the workman further argued that the respondent should have struck off the name of the workman under the rule and standing orders after expiry of the said period but they have done so due to some ulterior motive in the mind of the respondent and without ulterior motive to raise this plea in the reference which cannot be approved in law. He argued that there is no law on the earth which provides the continuity of service even after absent for such long time without any leave or permission from the respondent-management as he joined this factory on 1st January, 1977 working smoothly since then. The respondent has not denied this fact in the written statement and in the statement of he witness. So the reference is not bad in the eye of law.

After leading the evidence by both the parties, the representative of the management has made a statement in the Court that the workman has collected his full and final dues and has relinquished his right of reinstatement,—vide Mark "B". The representative of the workman did not agree with this statement. On this representative of the management was directed to produce the workman for admission of the settlement, which he has failed to do so. In these circumstances I cannot accept this settlement to be executed, when the representative of the workman oppose the settlement and the representative of the management has failed to prove this settlement.

• After hearing the parties and considering the whole record carefully, I am of the view that the arguments of the representative of the workman has some force and I agree with his arguments and hold that reference is not bad in law. So findings on issue No. 1 goes in favour of the workman and against the respondent-management.

ISSUE NO. 2:

After deciding the issue No. 1 in favour of the workman there is nothing left to discuss for issue No. 2 because denial to accept the workman on duty is equivalent to the termination. Although there is no written order for the claimant's termination yet the denial to give the duty to the workman is a termination. So this act of the respondent-management is against the law and unjustified. So the workman is entitled for his reinstatement with full back wages and continuity of service. No order as to costs. This be read in answer to this reference.

Dated 2nd February, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 348, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8Lab/1489.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of

the dispute between the workman and the management of M/s Vinita Textiles, Sector 2, Tigaon Road, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 522 of 1980

between

SHRI RAM NATH, WORKMAN AND
THE RESPONDENT-MANAGEMENT
OF M/S VINITA TEXTILES, SECTOR-2,
TIGAON ROAD, BALLABGARH

Shri H. R. Dua for the workman.

Shri K. P. Aggarwal for the respondent-management.

AWARD

This reference No. 522 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/117-80/54828, dated 27th October, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Ram Nath, workman and the respondent-management of M/s Vinita Textiles, Sector 2, Tigaon Road, Ballabgarh. The terms of the reference was—

Whether the termination of service of Shri Ram Nath was justified and in order? If not, to what relief is he entitled?

Notices were sent to the parties, on receiving this reference. The parties, appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was employed permanently. The respondent began to harass the workman and creat circumstances to starve the workman and suspended the workman without any power. The respondent issued a false and fabricated charge-sheet in which the workman replied in true facts. The respondent appointed Shri Jagbir Singh as enquiry officer who was neither independent nor competent to conduct the enquiry. Still the respondent did not reply to the objections of the workman. The workman required some amenities,—vide letter, dated 1st July, 1980 which were turned down by the respondent,—vide

considering the request of the respondent without any logic reason and justification. The enquiry conducted by the enquiry officer is fake and false as he did not afford the opportunity to the workman. The termination is illegal, wrongful, mala fide, motivated, and against the principles of natural justice and is colourable exercise of the powers and unfair labour practice. The workman is entitled for reinstatement with full back wages and continuity of service.

The case of the respondent according to their written statement is that the workman was not employed as permanent employee from the beginning. The respondent factory is employing less than fifty workmen and the provisions of certified standing orders mentioned in the claim statement of the workman. The respondent has its own rules and terms and conditions of service. It is wrong to suggest that the respondent wanted to harass the workman and created the circumstances to starve the workman. The misconduct of the workman was a very serious and grave nature and warranted his immediate suspension in order to maintain the discipline in the factory. The respondent has all powers to suspend the delinquent workman and same was exercised judiciously. The allegation in the claim statement that the charge-sheet was false and fabricated is quite false and the charge-sheet is based on fact which were duly substantiated in the domestic enquiry. The reply of the workman was unsatisfactory so it was necessary to hold a domestic enquiry. The only motive behind holding domestic enquiry was to find true facts. The enquiry officer Shri Jagbir Singh is an independent lawyer hence there was no possibility of getting a preconceived judgement from him. The enquiry officer acted in good faith and proceedings were conducted fairly and properly, keeping in view all the principles of natural justice. The findings of the enquiry officer are independent and based on fact as emerging from the proceedings. The contention of the workman as contained in the claim statement are totally incorrect, un-founded, mala fide and denied in toto. The objections

of the workman were considered carefully and rejected because they were not logically based and reasonable. The workman demanded to change the enquiry officer who was independent person, cannot be changed. The workman was informed about the decision of the respondent of these objections. The workman was given full opportunity to defend himself, fully and properly. He was given full opportunity to cross-examine all the management witnesses, which he did and produced the witnesses in his defence. Copies of the proceedings were supplied to the workman according to the rules. The workman was given facilities to be represented of his choice, as per the rules of the company. The enquiry proceedings attached with the file of the whole proceedings contained in the domestic enquiry. The order of dismissal of the workman is fully proper, justified and legal and necessitated by the circumstances of the case. It has been after considering all fact and observing all the principles of natural justice. The management has neither exercise any unfair labour practice nor any victimization. The action was taken within the frame work of law. The workman is gainfully employed after leaving the services of the respondent and he is not entitled to any relief. So the reference may be dismissed.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the domestic enquiry held by the respondent is proper, justified and in order? If so, to what effect?
- (2) Whether the workman is gainfully employed?
- (3) Whether the termination of services of the workman is proper justified and in order? If not, to what relief is he entitled?

In the above issues it was ordered that issue No. 1 be treated as preliminary issue, so my findings on issue is as under:—

ISSUE NO. 1:

The respondent's representative argued on this issue that the workman was not doing his work properly in the

factory and he was also instigating the other workmen for low production. It was started from 2nd April, 1980 and continued up to 31st May, 1980. The respondent observed all these facts and the supervisor reported the matter to the respondent about the whole functioning of the workman. The three workmen, namely, Shri Bal Kishan, Ram Adhar and Bal Kishan were leading in this matter. They also refused to take the warning letter from the supervisor and the respondent. After this the respondent decided to issue charge-sheets to these workmen and the charge-sheet is Exhibit M-2 was issued to the workman showing the four allegations including absent from duty without any leave sanctioned or any information. The workman took the charge-sheet and replied the same,—vide Exhibit M-3. After considering the reply which was unsatisfactory, the respondent suspended the workman and constituted a domestic enquiry against the workman,—vide Exhibit M-5 and informed the workman. The workman replied the same,—vide Exhibit M-4. The enquiry officer Shri Jagbir Singh started his enquiry proceedings on 7th July, 1980 in which the representative of the respondent, the workman and his representative Shri Barsati Lal came present and participated in the whole enquiry. He further argued that according to the principles of natural justice four things are required in the enquiry:—

- (1) Communication of the material alleged.
- (2) Opportunity given.
- (3) Recording of the evidence.
- (4) Existing of impartial enquiry officer as stated in 1978-I-LLJ, Page 335.

According to this, the respondent communicated the material alleged, the charge-sheet and other material required under the enquiry. The workman was given full opportunity in the enquiry proceedings and he was also given the facilities of being replied by his representative Shri Barsati Lal who cross-

examined the respondent witnesses fully well and the workman gave his own witness and evidence and closed his case on 27th July, 1980 and signed the same, which is very clear in the enquiry proceedings. Exhibit M-5. The evidence of the respondent and the workman were recorded in the enquiry proceedings properly well which were signed by the workman and his representative on all dates of proceedings. The enquiry officer was independent lawyer, very competent for the enquiry which was a impartial man. After conducting the enquiry the enquiry officer prepared the enquiry report which is Exhibit M-17. The enquiry report is based on the facts and the record of the respondent on the act and record produced before the enquiry officer, the enquiry officer gave his findings and found the workman guilty of the charges. After receiving the enquiry report from the enquiry officer, the respondent gave the show cause notice to the workman which is Exhibit M-19 which was received by the workman and replied the same,—vide Exhibit M-20 to M-22. After considering the whole record and enquiry proceedings and findings of the same, the respondent-management decided to remove the services of the workman,—vide Exhibit M-23 according to the enquiry findings. He further argued that the enquiry officer came in the Court to prove the enquiry before this Court. He further argued that the workman has produced no record, or any evidence to prove the allegations. The workman has come as his own witness as WW-1 and stated that he has signed the proceedings which was were got forcefully. He has further denied in his cross-examination that he had not complained to the labour department or police authorities for this force applied by the respondent. The workman has not alleged any wrong against the proceedings of the enquiry or the enquiry officer in his statement as well as in his demand notice and claim statement. The enquiry was fair and proper every opportunity was given to the workman to give his evidence and to cross-examine the witnesses of the respondent. After a fair and proper enquiry the workman was removed from the

service according to the guilt found by the enquiry officer which was a proper findings of the enquiry officer.

The representative of the workman argued on this issue that as there is no standing orders applicable to the respondent so the respondent have not cared for any rules of natural justice. The false and fabricated charge-sheet was issued to the workman with a false facts. The workman replied the same on the true facts of the case. The respondent should have believe the reply of the workman which the respondent wrongly rejected the same. The workman raised objections for the appointment of enquiry officer and for the person for the workman's representation in the enquiry proceedings. The objections were wrongly over ruled by the respondent against the principles of natural justice. The enquiry officer was not the impartial and competent to hold the enquiry because he represented the respondent in the cases before the Courts so he cannot given the impartial findings. The enquiry officer mis-behaved the workman in the enquiry proceedings and got signatures of these workman forcefully with the help of anti-social person acquired by the respondent. The enquiry officer did not give the enquiry report to the workman which is against the principles of natural justice. The enquiry officer refused to give the facilities in the enquiry proceedings to the workman which was his right and which were derived by the enquiry officer so the enquiry was not fair and proper.

After hearing the arguments of both the parties, and going through the file carefully, I am of the view that the enquiry was conducted fairly by the enquiry officer. Every opportunity is given to the workman in the enquiry proceedings. The workman with his representative, has signed the enquiry proceedings which are filed in the case, and I have gone through the whole proceedings of the enquiry. The workman closed his defence and signed the same, shows that he has been given the full opportunity in his defence. After giving so much opportunity to the workman, it is wrong to say that the sig-

naures on the proceedings were got signed by force. The workman in his statement as WW-1 has simply said that the signature on enquiry proceedings were taken by force, but he has not mentioned what type of force was used by the enquiry officer or the respondent in the enquiry proceedings. There were serious charges of mis-conduct against the workman and the enquiry officer has hold guilty of these charges and the findings of the enquiry officer are quite correct according to the fact before him in the enquiry proceedings. So the preliminary issue is decided in the favour of the respondent and against the workman, and the enquiry was fair and proper.
ISSUES NO. 2 & 3:

After holding the enquiry proper and fair, there is no need to give opportunity to the parties to lead any evidence in the case because on the basis of the enquiry the respondent has rightly terminated the services of the workman according to the rules and natural justice. So after the right and justified termination the workman is not entitled to any relief. This be read in answer to this reference.

HARI SINGH KAUSHIK,
The 2nd February, 1982

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 349, dated 5th February, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.